Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 1995

FREDERICK G. JENSEN,
Petitioner,

v.

UNITED STATES
ATTORNEY GENERAL, JANET RENO,
Respondent,

AND

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition for the Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Frederick G. Jensen
P.O. Box 7001
Olympia, WA 98507
(360) 534-9906
Appearing pro se

95

QUESTIONS:

1.

DOES A TAXPAYER WHO COMES INTO COURT AS SUCH, WHO RAISES A POTENTIAL CONSTITUTIONAL QUESTION ABOUT SUCH LIFE AS ALL UNBORN MAY OR MAY NOT POSSESS, BRING A FRIVOLOUS SUIT MERELY BECAUSE HE DOES, IN FACT, RAISE A VALID CONSTITUTIONAL QUESTION?

2.

DOES A TAXPAYER WHO FAILS TO PAY FEDERAL INCOME TAXES FOR A REASON THAT MAY OR MAY NOT BE LEGALLY VALID LOSE HIS STATUTORY RIGHT TO JUDICIAL REVIEW OF LEVIES AND SEIZURES THAT ARE NOT PROPERLY MADE?

PARTIES TO THE PROCEEDING

The Petitioner, Frederick G. Jensen is a retired Merchant Marine deck officer who has for years used his money and time to get a case on the books that present the arguments in favor of life for the unborn in law.

The Respondent is the United States of America in the person of its Attorney General,

And, in the person of the Commissioner of Internal Revenue,

Both represented by the same attorney.

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SUPREME COURT OF THE UNITED STATES

October Term, 1995

JENSEN V. RENO, UNITED STATES ATTORNEY GENERAL

Appellate Court, 9th Circuit No. 94-35740

AND,

JENSEN V. COMMISSIONER OF INTERNAL REVENUE

Appellate Court, 9th Circuit No. 95-70045

Petitioner, Frederick G. Jensen, respectfully requests that the Court's Writ of Certiorari may issue to review a judgment of the District Court for the Western District of Washington at Tacoma, where the Tax Court Subsequently denied jurisdiction, upheld by the United States Court of Appeals for the Ninth Circuit.

Rehearing and Hearing En Banc denied in both instances.

This request for the Court's writ of certiori to be served upon Appellate Court, 9th Circuit in cases No. 35745-94 and No. 70045-95, Jensen v. Reno, U.S. Attorney General and Jensen v. C.I.R. (TC No. 94-15952) D.C. Nos. CV93-p5562FDB, renumbered CV92-05148B, is the unresolved matter first appearing in D.C. Richmond, Va. in 1985. That case was denied certiorari and an accounting: Nos. 796 F. 2d 473, aff'd1, 479 U.S. 924 and 999, accounting denied.

Jensen has tried to file with the Supreme Court of the United States since 1992, but was not able to get the clerk to file. The refusal was always based on some legal ground, usually stipulated in the rules.

JURISDICTIONAL AUTHORITY

The authority of the Court to grant this application for a writ of certiorari is found in subsection (c) of

§2101 of the United States Code, "...any writ of certiorari intended to bring any judgment before the Supreme Court for review shall be taken or applied for within 90 days after the entry of such judgment or decree."

The panel (Wallace, C.J., Hug and Noonan, Cir. Judges) voted to deny applicant's petition for a rehearing and to reject a rehearing en banc that plaintiff-appellant suggested in Jensen v. Reno, No. 94-35740, D.C. Nos. CV93-05562FDB and CV92-05148B renumbered after personal service was made as demanded by government's counsel. The court's order was filed 2 Nov. 1995.

Another appeal concerning his taxes is before this court in Jensen v. C.I.R., No. 95-70045. It came up from Tax Court, No. 94-15952. Jensen believes judgment in the cases can be made either together or separately.

RELATED CASES

This request for the Court's writ of certiorari to be served upon Appellate Court, Ninth Circuit in case No. 35740, Jensen v. Reno, Attorney General, D.C. Nos. CV 93-05562FDB, renumbered, CV92-05148B, is the unresolved matter first appearing in D.C. Richmond, Virtinia in 1985 which was denied certiori and an accounting: Nos. 796 F. 2d 473, aff'd 479 U.S. 924 and 999, accounting denied.

Jensen has endeavored to file with the Supreme Court of the United States since 1992 but has not been able to get the clerk to file, whose refusal was always based on technical grounds, not substantive grounds, apparently.

JURISDICTIONAL AUTHORITY

The authority of the Court to grant this application for a writ of certiorari is found in subsection (c) of

§2101 of the United States Code, "...any writ of certiorari intended to bring any judgment before the Supreme Court for review shall be taken or applied for within 90 days after the entry of such judgment or decree."

The panel (Wallace, C.J., Hug and Noonan, Cir. Judges) voted to deny applicant's petition for a rehearing and to reject a rehearing en banc that plaintiff-appellant suggested in Jensen v. Reno, No. 94-35740, D.C. Nos. CV93-05562FDB and CV92-05148B renumbered after personal service was made as demanded by government's counsel. The court's order was filed 2 Nov. 1995.

Another appeal concerning his taxes is before this court in Jensen v. C.I.R., No. 95-70045. It came up from Tax Court, No. 94-15952. Jensen believes judgment in the cases can be made either together or separately.

FACTS OF THE CASE

In 1986 when the Supreme Court denied certiorari and an accounting in Jensen's tax problems, he moved to the Philippines to avoid having to pay taxes. (The Constitution of the Philippines protects, equally, the life of the mother and her unborn child.) He was able to live inexpensively and his social security checks piled up in Irvington, Va., in Chesapeake National Bank.

Though he had already lost his pick-up truck and real property, no further raids were made at this bank by the I.R.S.. On the 30th of May, 1992, Jensen returned to Olympia, Washington with the intention of renewing his legal fight abainst abortion.

Unknown to him, the I.R.S. served a notice of levy on Dean Witter's bank in New Jersey, dated June 2nd. On 26 June Jensen paid with a $30,000 cashier's check drawn on Seafirst National

in Olympia for stock bought by his broker at Dean Witter's office in Olympia. On the 29th of June the broker said the company "broke" the sale and on the 7th of July Dean Witter notified Jensen $24,354 had been seized by the I.R.S.

Jensen tried to file his intended abortion case against the State of Washington with the Supreme Court on 21 August and for almost a year thereafter, applying to each of the justices of the Court in turn. The clerk and the Court barred the filing of the plea for declaratory relief.

On the 4th of October 1993 Jensen filed C93-5148B in District Court, Tacoma, against the United States complaining of his tax problems, once again. He refiled in December on the 29th, and the case was renumbered C94-5562FDB when Jensen hired a local legal messenger service to make personal service on the

government. On 13 July 1994 District Court dismissed the case as frivolous and out of its jurisdiction. However, 28 U.S.C. §1331 reads:

> "The District Court shall have original jurisdiction of all civil actions arising under the Constitution, laws, and treaties of the United States."

And, the law of this case is found in the 5th, 13th, and 14th amendments to the Constitution.

On 26 July 1994 Jensen appealed the constitutional question to Appellate' Court's 9th Circuit under 26 U.S.C. §1291, No. C94-35740.

On 6 September 1994 Jensen filed the tax question on seizure of the check in Tax Court, 94-15952 as Jensen v. C.I.R. The court refused to rehear this case on 08 December 1994, C. Judge L. W. Hamblin, Jr. on the ground it had no jurisdiction for lack of any notice of deficiency that was ever issued.

On 15 December 1994 Jensen filed his appeal of the Tax Court's dismissal, No. C95-70045, with the 9th Circut Appellate Court, rehearing and hearing en banc denied at this point.

These two cases before the court of appeals, Nos. C94-35740 and C95-70045 are raising questions about whose job it is to decide tax and constitutional questions that petitioner views as linked to one another, but, are surely not settled in the United States.

BASIS FOR ORIGINAL JURISDICTION

The District Court, a court of first instance, had jurisdiction to hold the abortion question frivolous:

"....his claim based on the abortion issue is frivolous." No. C94-5562FDB, page 2, Order Granting Defendant's Motion to Dismiss and Denying Plaintiff's Motion for Joinder

A similar decision was upheld by the Court of Appeals in Richmond in 1986.

District Court has the power

to dismiss a constitutional question it holds frivolous without calling for a three-judge court. Moreover, the court had the power to dismiss the tax question itself as frivolous and it did so on the ground that the reason given for non-payment was alleged to be constitutional. Jensen is not aware that the tax protest against abortion has ever been tried. No such case exists.

The District Court's decision can be interpreted in two ways: 1) It once again held the abortion/life question to be frivolous; and, 2) It held every refusal to pay taxes for reasons of constitutional law to be frivolous.

Also, District Court denied the joinder of the State of Washington's defense of its statute banning assisted suicide in Compassion-in-Dying, C94-119R, D.C. W.W., Seattle, in which an opinion was rendered on May 5, 1994. Since this

case involved the right of a doctor to take the life of a patient, Jensen felt the same legal question that he was raising would be settled. See appendix C and D, letters to Washington's attornies, dated May 10 1994 and October 28, 1994. However, the State of Washington took the position in oral argument that no constitutional question about life was involved and that the State was free to permit assisted suicide via legislative action. It suggested the matter was not for the court to decide.

District Court felt Jensen's tax questions had not been raised by exhaustion of his administrative remedies. So, Jensen went to Tax Court where he learned the Tax Court had no jurisdiction unless he was contesting a notice of deficiency. The two decisions seem to be at variance.

PUBLISHER'S NOTE:

THE FOLLOWING PAGES WERE UNAVAILABLE FOR FILMING:

9-10

the unborn. It has speculated the unborn is protoplasm, part of the mother, potential life arising under the compelling interest of the state, and possessing a fictional inchoate life similar to the inchoate right of the unborn to inherit acknowledged in probate courts.

In stating that it did not need to know when life begins, as in Roe the Court may have been implying that life did indeed begin before birth, but that a concptus, embryo, or fetus was not human. Whether life is a matter of fact, fiction, or law, its reality must be known before judgments can be made about acts like abortion, homicide and murder. See Appendix E, a real case.

Apparently, the Roe Court did not note the dictum of Union Pacific Ry v. Botsford, 141 U.S. 250 (1891) nor the concealment of birth statutes of some states.

THE STATUS OF THE UNBORN IN RECENT CASES

In California law, Crimes against the person, §187, Murder defined, death of a fetus, subsection (a) reads, "(a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought."

Under this statute in California v. Davis, 30 Cal. Rptr. 2d 50, 872 P 2d 591 (16 May 1994) a criminal case brought for the death of a fetus under the statute, into which had been inserted the words, 'or a fetus', the Supreme Court found the criminal indictment could not be upheld because it operated under an ex post facto law.

Pages 56 to 59 analyse the current status of authorities on the subject of the life of the unborn and the use and abuse of the sex factors, sperm and ovum. The question addressed is not the question of malice, but the definition of what is life by law.

Please note Jensen's briefs are based on the common law misdemeanor that made the taking of the life of the unborn heinous, but never a felony, unless the victim was born alive and died shortly after birth. This case indicates the current law tends to follow the pre-1973 abortion statutes declared unconstitutional in Roe/Doe, which had all criminalized the destruction of the unborn child.

A separate sentence for the life of the unborn was actually handed down on June 20, 1995 in State v. Yang, 533 N.W. 2d 81 (Minn. App.). "The propriety of imposing a consecutive sentence for the murder of an unborn child is an issue of first impression in Minnisota. See 1986 Minn. Laws ch. 389, State v. Merrill, 450 N.W. 2d 318, 322 (Minn.) (unborn homicide laws do not conflict with Roe v. Wade decision because statutes do not impinge on a woman's right to privacy) Cert. Den. 496

496 U.S. 931, 110 S. Ct. 2633, 110 L. Ed. 2d 653 (1990)."

Another criminal case, Nebraska v. Williams, 530 N.W. 2d 904 (1995, April 17th), in which a pregnant woman was shot to death, though the baby died 18 days later, had an entirely different result. Upon conviction for the death of the mother the defendant appealed on the ground the evidence concerning the death of the child was unduly prejudicial and should have been excluded. The Nebraska court found the evidence admissibility objection had not been 'preserve' for the appeal. See §28-325 Ff for Nebraska'a abortion law. Section 28-302(2) reads, "'Person' when referring to the victim of a homicide shall mean a human being who has been born and was alive at the time of the Homicidal act.

Granting that both states are attempting to 'follow' Roe/Doe, the way in

which they view the life of the unborn is producing opposite results.

Tort law also develops slowly in favor of greater protection for the unborn; See Thibert v. Milka, 646 N.E. 2d 1025 (Mass. 13 March 1995), a suit brought upon an injury before birth on behalf of a non-viable fetus of 16 weeks not born alive under the state's wrongful death statute. The court noted: (p. 1026), "The plaintiff asks that we extend a cause of action for wrongful death of a stillborn that was not viable at the time of the injury. We decline to do so."

Thus, Massachusetts adheres to the 'born-alive' rule of the common law it espoused in Dietrich v. Northhampton, 138 Mass. 14 (1884). However, the rule is modified by Keyes, Lecesse, and Mone, cited in the same case (Thibert).

Landmark decisions in this area of the Law are Cheaney v. State, 284 N.W. 2d 265 (1972), an Indian case, and Drabbels v. Skelly Oil Co., 50 N.W. 2d 229 (1951), 155 Neb. 17. However, the status of the conceptus, fetus, the 'quick', and the viable child is still up in the air. The right of a doctor to take the life of a patient, especially the mother's child, is a legal grey area where a fine line is the rule of law, a palpable contradiction.

ANALOGOUS INJURIES

The tax case, 15952-94, was thrown out of the Ninth Circuit court of appeal. The plea for accounting and refund was dismissed by the Tax Court for lack of jurisdiction an is upheld by Appellate Court in No. 70045, since the Tax Court dismissed the case in the absence of a notice of deficiency that was not issued by the Commissioner of Internal Revenue.

A recent case, In the Matter of Voelker, 42 F 3d 1050 7th Cir. (12 Dec. 1994) states on p. 1050, "Extending the I.R.S. lien to property exempt from lien (which is needed to perfect the inchoate lien for taxes)....allows the debtor to protect his property from summary, non-judicial procedure." Jensen has a right, therefore, to approach the court.

Stevens v. U.S. 49 F 3d 331 on 333 cites Levi v. Ingersoll Rand Financial Corp., 874 F 2d 1186, 1191, (7th Cir. 1989) to show that interest and penalties are not taxes, though they are collected in the same way taxes are collected. Jensen has a right to ask for the return of interest and penalties alleged where tax amounts paid and years paid are not accounted for.

And, on p. 337 Stevens notes, "Their absence (the absence of notice and demand, i.e. notice of deficiency and levy)

is irrelevant in a refund suit." So that, somewhere, a court has jurisdiction, even though Jensen cannot show a notice of any deficiency to the court, where the notice of levy fails to account for funds accumulated by the government in former seizures.

These cases illustrate how the statutory inchoate lien upon the taxpayer's property is perfected. The Roe court pointed out that probate courts honored the inchoate lien of the unborn to inherit, as perfected by birth. It surely follows the unborn is res substancia at law, for the non-living cannot be the subject of devises at the future moment of testator's death.

The injury done Jensen and the injury done the unborn arise out of the skewed view the courts are taking of those possessing rights involving legal fictions.

The courts are refusing to honor the strict limitations governing the inchoate lien of the government on taxpayer's property as well as refusing to recognize the inchoate character of the right of the unborn to share in an inheritance under the common law rule of descents. The rule gives the unborn a right to share with others in an inheritance because he was "alive" on the date of devisor's passing.

The cases are not exact, but they are tellingly and effectively analogous.

WHAT FORUM? (That is the Question)

Concerning the injury done to the unborn currently aborted medically, does the District Court or the Tax Court have the power to hand down a declaratory judgment similar to the declaratory judgment handed down by the Supreme Court creating sui generis, a new right in the

mother and her physician to terminate a pregnancy by destroying unborn life?

Petitioner looks for an answer to this question because he was denied his right to file with the U.S. Supreme Court by the clerk on the ground that the Court does not hand down declaratory judgments.

CONCLUSION

It is the opinion of petitioner that the power of our lower courts to use the declaratory judgment to create remedies, according to statute granting jurisdiction, is sufficient to rehear, reverse, or modify an opinion of the Supreme Court in the light of the fact that the Supreme Court of the United States has always relied abundantly and safely on its power to issue its writ of certiorari if and when it is necessary to provide its learned supervision where errors of law appear.

Appellate Court should be ordered to decide this case in the same way that it decided Compassion-in-Dying, No. 94-35534, March 9, 1995, notwithstanding that Appellate Court did reverse a decision of District Court in Seattle decided in reliance on Roe/Doe, and notwithstanding that the full court will rehear the case brought by doctors asking about taking life medically, while refusing to decide (rehear) this case questioning the right of anyone to take the life of the unborn.

Dated: 15 Feb. 95

/S/ F G Jensen

Frederick G. Jensen
Pro se
P.O. Box 7001
Olympia, WA 98507
Tel. (360) 534-9906

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FREDERICK G. JENSEN Plaintiff, v. JANET RENO, UNITED STATES ATTORNEY GENERAL Defendant.	CASE NO. C93-5562FDB ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND DENYING PLAINTIFF'S MOTION FOR JOINDER

INTRODUCTION

Plaintiff Frederick Jensen was indebted to the United States for individual federal income taxes for the years, 1981, 1982, 1983, and 1984. Jensen did not dispute that he owed the money, but refused to pay willingly, causing the IRS to take collection action by levying on Plaintiff's property, his Dean Witter/ Sears liquid Asset Fund (Dean Witter) for the $24,354.23 owing. Dean Witter notified Jensen of its intent to comply with the levy by letter June 11, 1992 and did

comply on July 7, 1992 by sending a check for the amount to the IRS. Jensen brings this lawsuit to recover those funds.

Jensen's arguments for recovery of the funds are that (1)property not subject to levy was turned over to the IRS, or, alternatively (2) that money may be kept if the U.S.A. separates the funds from the general fund making them unavailable "to pay the salaries of judges who refuse to decide whether and when the law upholds the inalienable right to such life as the unborn may possess... ." (Complaint, p. 4.)

Jensen moves to join the State of Washington "to so much of this suit as concerns the expenditure of tax collected funds which are used to pay for elective abortions for indigent women and to enjoin anyone, especially the prospective mother from choosing to terminate unborn human and potential life because it is prospec-

tively illegitimate, unwanted, or so handicapped as to require future heavy expenditures of money and care; ... ."
(Plaintiff's Motion for joinder p. 1.)

The USA moves to dismiss Plaintiff's complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

Defendant's Motion to Dismiss is granted because Plaintiff has failed to state a claim upon which relief can be granted, he has failed to satisfy the statutory prerequisite of filing a claim for refund with the IRS before filing this lawsuit, and his claim based on the abortion issue is frivolous. Plaintiff's Motion to Join the State of Washington should be denied in view of the RULING on the USA's motion to dismiss.

DISCUSSION

The Federal government as a sovereign is immune from suit except to

the extent that it consents to be sued. See, e.g., United States v. Sherwood, 312 U.S. 584, 586 (1941). Plaintiff points only to those statutes that allow IRS to collect the taxes it collected herein as a jurisdictional basis. Although Plaintiff did not cite it, 28 U.S.C. § 1346(a)(1) allows a taxpayer to sue the United States for a refund of taxes allegedly erroneously assessed or collected. If a taxpayer believes the entity submitting the property to the Government erred or turned over too much of the taxpayer's property, the taxpayer may file a claim for refund with the IRS or bring a refund suit against the Government.

Jensen may not maintain a refund lawsuit herein. A jurisdictional prerequisite to filing suit is to file a civil claim for a refund with the IRS. 26 U.S.C. § 7422(a); United States v. Felt & Tarrant Manufacturing Co., 283 U.S. 269 (1931).

Here, Plaintiff does not allege, nor does it appear that a claim for refund has been filed for any of the tax years in question. Also, Plaintiff does not allege or dispute that he owed the $24,354.23. Therefore, he has failed to state a claim upon which relief can be granted and has not shown that his taxes have been overpaid.

While Plaintiff has alleged that Dean Witter made a mistake when it paid over the money, Jensen does not deny owing the money nor has he pointed to any procedural error by the IRS that would render the collection activity illegal. There is no basis for a refund. moreover, Dean witter is relieved of liability to the taxpayer because it was complying with the levy of the IRS. 26 U.S.C. § 6332(d).

Plaintiff Jensen's desire to withhold funds concerning federal activity to facilitate abortion is futile. The jurisprudence on the subject of taxpayers

who wish to earmark funds for certain endeavors and withhold for others reflects consistent rejection of this idea. The Government could not operate if such a concept were in force. See, e.g., Lull v. Commissioner, 602 F. 2d 1166 (4th Cir. 1979). Taxpayers may object to some of the things that the Government does, but this does not relieve them of their obligation to pay taxes. Autenrieth v.Cullen, [illegible] 418 F. 2d 586 (9th Cir. 1969).

Since it would be futile to allow Plaintiff to join the State of Washington under the above analysis, Jensen's motion to join is DENIED.

Accordingly, Defendant's Motion to Dismiss is GRANTED and Plaintiff's Motion for Joinder of the State of Washington is DENIED.

DATED this 13 of July, 1994.

Franklin D. Burgess
United States District
Judge

Appendix, A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FREDERICK JENSEN,	No. 94-35740
Plaintiff-Appellant	D.C. No. CV-93-
v.	05562-FDB
JANTET RENO, Attorney General,	MEMORANDUM*
Defendant-Appellee.	

Appeal from the united States District Court for the Western District of Washington Franklin D. Burgess, District Judge, Presiding

Submitted May 16, 1995**

Before: WALLACE, Chief Judge, HUG and NOONAN, Circuit Judges.

Frederick G. Jensen appeals pro se the district court's order dismissing his complaint alleging wrongful levy by the Internal Revenue Servic ("IRS") on Jensen's Dean Witter investment account. Jensen contends that he should not be obligated to pay federal income tax based on his

Appendix, B

opposition to the federal government's protection of the right to abortion. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Jensen's contention that he should not have to pay income taxes because of his opposition to abortion fails. Attemps by taxpayers to restrict the Government's use of their tax payments have been consistently rejected by the Courts. See United States v.Lee, 458 U.S. 252, 260 (1982) (The tax system could not function if (taxpayers) were allowed to challenge the tax system because tax payments were spent in a way that violates their religious beliefs."); Barton v. Commissioner, 737 F. 2d 822, 823-24 (9th Cir. 1984) (even if right to conscientious objections to war were protected by the Constitution, taxpayer could not validate his claim for tax credit

proportionate to percentage of national budget expended for defense based on that right) (per curiam).

To the extent that Jensen seeks a refund of taxes paid, the district court properly dismissed tha action because Jensen failed to allege exhaustion of his administrative remedies pursuant to 26 U.S.C. § 7422§a¶. Tho9mas v. United States, 755 F. 2d 728, 729 (9th Cir. 1985).

The government's request for sanctions is denied.

AFFIRMED

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

Appendix, B

P.O. Box 7001
Olympia, WA

10 May 1994

Tel. (206) 534-9906

Christine K. Gregoire
Attorney General
State of Washington
907 Plum Street
Olympia, WA 98504

Re: Jensen v. U.S., Atty Gen Reno
C-93-5562FDB

Dear Ms. Gregoire:

Enclosed is the complain in the above case. Also enclosed is a copy of additional paragraphs to that complaint which I am asking the leave of the court to add.

The additional paragraphs are the result of the decision in Compassion for the Dying v. Gregoire. In that case you were arguing in favor of life under 9a.36.060.

You now have an opportunity to join Jensen in his pro-life suit against

the United States, or, you may opt to support and defend S.B. 5304, the administration's health plan, which I regard as anti-life.

If you wish I will move the court to join the State with the United States as a defendant in my suit.

Sincerely,

F.G. Jensen

Appendix, C

P.O. Box 7001
Olympia, WA 98507

28 October 1994

Tel. (206) 534-9905

Re: Jensen v. Reno, C-93-5562FDB

Mr. William L. Williams:

This letter is a follow-up upon your reply of May 16th to let you know the above case is being appealed in Ninth Circuit Court, No. 94-35740. U.S. Attorney's answer to my opening brief is due on November 2nd.

The enclosed case report, commonwealth v. Mink, (sic) 123 Mass. 422 (1877) surely indicates some of the questions that Compassion-in-Dying will be dealing with if assisted suicide becomes "national" instead of state law in the future. See Ch. J. Rehnquist's dissent in Casey.

Sincerely,

F.G. Jensen

Appendix, D

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

FREDERICK G. JENSEN, Petitioner,	)	Docket No. 15952-94
V.	)	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On November 7, 1994, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that no statutory notice of deficiency has been sent to petitioner for the taxable years 1979, 1980, 1981, 1982, 1983, and 1984.

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking the redetermination of a deficien-

TACOMA

Emergency workers cleared in case of baby born in a toilet

News Tribune staff 13 JUNE '95

King County police have determined North Highline Fire District medical workers didn't commit a crime when they placed a newborn baby into a medical-waste bag, falsely believing she was dead.

Last week police determined there was no sign of criminal behavior by the infant's mother or her family, said police spokesman Jerrell Wills.

Meanwhile, the baby girl was in satisfactory condition at Children's Hospital and Medical Center in Seattle. She may go home to her family today, a spokesman said.

The girl was born June 6 in the bathroom of the Burien-area home of her teenage mother and family. The 16-year-old mother and her parents told emergency medical technicians they didn't know the girl was pregnant.

Medical workers found the baby in the toilet and checked it for signs of life. Finding none, they assumed the mother had miscarried and they placed the baby in a plastic biohazard bag.

When the bag moved in an ambulance on the way to the hospital, paramedics realized the baby was alive.

Investigators from the Fire District and King County's office of Emergency Medical Services still are investigating the incident.

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cy, the jurisdiction of the Court depends, in part, on the issuance by the Commissioner of a valid notice of deficiency to the taxpayer. Rule 13(a), Tax Court Rules of Practice and Procedure; Frieling v. Commissioner, 81 T.C. 42, 46 (1983). The notice of deficiency has been described as "the taxpayer's ticket to the Tax Court" because without it, there can be no prepayment judicial review by this Court of the deficiency determined by the Commissioner. Mulvania v. Commissioner, 81 T.C. 65, 67 (1983).

Petitioner was served with a copy of respondent's motion to dismiss and given the opportunity to file a notice of objection. On November 21, 1994, petitioner filed an objection to respondent's motion to dismiss. Petitioner has not established that a notice of deficiency has been sent for the taxable years 1979, 1980, 1981, 1982, 1983 and 1984, required

by Internal Revenue Code, Section 6213(a) to form a basis for an appeal to this Court. The notice which was attached to the petition is a Notice of Levy and does not constitute a statutory notice of deficiency.

The premises considered, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction is granted, and this case is dismissed for lack of Jurisdiction.

(Signed) L.W. Hamblen, Jr.
Chief Judge

Entered: Nov. 25, 1994

UNITED STATES TAX COURT
WASHINGTON D. C. 20217

FREDERICK G. JENSEN, Petitioner,	)	
V.	)	Docket No. 15952-94
COMMISSIONER OF INTERNAL REVENUE Respondent.	)	

ORDER

On November 25, 1994, the Court granted respondent's Motion to Dismiss for Lack of Jurisdiction on the ground that no statutory notice of deficiency has been sent to petitioner for the taxable years 1979, 1980, 1981, 1982, 1983 and 1984.

On December 5, 1994, the Court received a document from petitioner which has been filed by the Court as petitioner's Motion to Vacate the Court's Order of Dismissal for Lack of Jurisdiction.

This Court is a court of limited jurisdiction. It may exercise jurisdic-

tion only to the extent expressly provided by statute. In a deficiency case, the jurisdiction of the Court depends, in part, on the issuance by the Commissioner of a notice of deficiency. The notice of deficiency has been described as the taxpayer's "ticket" to the Tax Court, because without such a notice this Court has no authority to determine the income tax liability.

Petitioner has not established that a statutory notice of deficiency was issued for the taxable years 1979, 1980, 1981, 1982, 1983 and 1984. In such circumstances there is no basis for an appeal to this Court pertaining to the taxable years 1979, 1980, 1982, 1983 and 1984.

The foregoing considered, it is

ORDERED that petitioner's Motion to Vacate the Court's Order of Dismissal for Lack of Jurisdiction filed December 5, 1994, is denied.

Dated: Washington, D.C. December 8, 1994 (Signed) L.W. Hamblen, Jr Chief Judge

Appendix, G

UNITED STATES TAX COURT
WASHINGTON

Frederick G. Jensen Petitioner (s)	)	
v.	)	Docket No (s).
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

NOTICE OF FILING NOTICE OF APPEAL

To: Mr. Stuart L. Brown
Chief Counsel
Internal Revenue Service

You are hereby notified that the petitioner on December 15, 1994 filed with the Clerk of the United States Tax Court, at Washington, D.C. a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit, of the decision(s) of the United States Tax Court entered in the above-entitled case(s).

A copy of the indicated Document as filed is hereto attached and served

Appendix, H

upon you.

Charles S. Casazza

_____

CLERK OF THE COURT

DATED: December 22, 1994

Form 17
Rev. Jan 1982

Appendix, H

Filed, Dec. 29, 1993

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT TACOMA

FREDERICK G. JENSEN,	)	
Plaintiff,	)	Case No. C93-5562B
v.	)	Complaint Against
JANET RENO,	)	I.R.S. for
United States	)	Illegally Collected
Attorney General,	)	Penalties, Fines &
Defendant.	)	Interest
	)	

CIVIL SUIT IN LAW AND EQUITY

Defendant's Attorney:

KATRINA PFLAUMER
U.S. Attorney General
Weatern District Wash.
3600 Sea-First Plaza Bldg.
800 5th Avenue
Seattle, Wa 98104

Tel. (206) 553-7970

Plaintiff, pro se

FREDERICK G. JENSEN
P.O. Box 7001
Olympia, WA 98507

Tel. (206) 534-9906

/S/_____
Frederick G. Jensen

Appendix I, Pp. 1-8

COMPLAINT AGAINST I.R.S. FOR

ILLEGALLY COLLECTED

PENALTIES, FINES & INTEREST

1) Comes now Frederick G. Jensen, Plaintiff in this action, for the return of penalties, fines, and interest illegally collected by the I.R.S. under 26 U.S.C. 6331(b), 6332(d), and 6343(a)(1)(B) in a civil suit in law and equity.

2) From 1941 to 1971 defendant was the owner and charterer of certain steamships, namely, S.S. Julia Luckenbach, U.S.A.T. Brazil, T.S. Pine Ridge, S.S. Clearwater Victory, and others which were used to transport military personnel, jet fuel, military equipment, aerial bombs, etc. in support of military operations.

3) On and after Dec. 7, 1941 on a voyage from New York to Brisbane aboard the Julia Luckenbach plaintiff was in the employ of defendant as an able seaman and subsequently as a deck officer aboard several vessels on voyages to various war zones (i.e., war bonus paid) under seaman's

articles at various wage rates, a portion of which were unpaid and were placed in a fully funded pension fund organized under the laws of New York State after 1956 to be paid upon retirement in 1971 and after. Plaintiff retired with 21 years of pension credits.

4) In 1978 plaintiff was well retired in the State of Washington when he learned by reading the world almanac that abortions were over one million each year in the United States. (Please note it takes four years or more for the Alan Guttmacher Instituted sited on 5th Avenue in New York City and the U.S. Government vital statistics people in Georgia to provide annual figures.) Being certain the Supreme Court allowed women to obtain abortions on request under the mere color of legality, plaintiff refused to pay his income tax due that year and so marked and signed his 1040. He has not paid and does not intend to pay for

reasons of his legal conscience any tax as long as Roe/Doe is the supposed law of the land.

5) In 1985 and 1986 the Internal Revenue Service used its armed agents to seize for defendant's account two bank accounts, a pick-up truck, and real property in lieu of unpaid taxes. Plaintiff had been unable to obtain injunctive relief in Richmond District Court and plaintiff's request through his attorney, to deposit disputed taxes in the court's escrow account had also been denied.

6) In 1986 both District and Appellate courts in Richmond refused to acknowledge any question fo constitutionality regarding the life of the unborn and plaintiff's attorney was threatened with discipline under Rule 11 for bringing in a frivolous suit. Plaintiff-appellant asked for appellate court reconsideration, pro se, and this was denied. Plaintiff went to the

Supreme Court of the United States for a writ of certiorari, which was also denied. See Jensen v. United States, 479 U.S. 924, 999 Motion for accounting also denied. See 478 U.S. 949, and 796 F. 2d 473, unpublished.

7) Plaintiff moved to the Philippines for approximately five years during which no tax obligation accrued to the United States. The Constitution of the Philippines provides the law equally protects the life of the mother and her unborn child. Plaintiff returned to the United States on May 29, 1992 and stayed in Olympia, Washington.

8) On June 2, 1992, revenue collection officer Guadalupe Nanez at the I.R.S. office, 950 L'Enfant Plaza South, S.W., Rm. 3313, Washington, D.C. levied on Ean Witter Reynolds in New Jersey for $24,354.23 in taxes, interest, and penalties for the years 1981, 1982, 1983, and 1984 under

The stock is worth usually less than a dollar a share for several years now. Statute and the notice of levy require seized assets to be held for 23 days and then to be turned over to the I.R.S. Notice of the seizure was sent to plaintiff's former address in the philippines. The account manager received no internal company notice in Olympia, Washington.

9) On June 26, 1992, after the levy period had expired and without knowledge of the levy, plaintiff delivered to his account manager in Olympia a cashier's check of Seattle First National Bank, No. 8480043, in the amount of $30,000 for investment in certain Mutual Fund Stocks.

10) On July 7, 1992 Dean Witter sent its check, No203-000139492, in the amount of $24,354.23 to the I.R.S. and "broke" the sale of certain stocks.

11) Pleaintiff therefore demands the return of improperlycollected interest,

fees, and penalties as 26 U.S.C. 6443(b) lawfully permits the Secretary (of the Treasury) to do when levies are properly executed.

12) Plaintiff maintains in the case of a levy in addition to the levy of June 2nd, which was not executed, 26 U.S.C. 6331 (c) provides in subsection (C) that an additional levy must be made "in like manner" to the levy authorized in 26 U.S.C. 6331(b). No such notice of levy was made even after I.R.S. became aware that plaintiff had and address in the United States.

13) All persons in possession of levied property are obliged to surrender the property "subject to levy", but the above check was not subject to levy because no levy had been made on that property as required by U.S.C. 6332(d)(1).

14) Under 26 U.S.C. 6343(a)(1)(B) the Secretary is empowered to release a levy if it will facilitate collection. In the

Alternative plaintiff offers to pay tax as long as abortion is the law of the land if it can be paid in a way to insure that the money will be used for a specific purpose instead of being deposited in the general fund where it must be available to pay the salaries of judges who refuse to decide whether and when the law upholds the inalienable right to such life as the unborn may possess at any time, or, to pay for abortions among the military. Such a special fund may be the fund for national disaster relief.

Exhibits

#1 Voyage discharges vovering Dec. 7, 1941 Ff.

#2 Discharge, T.S. Pine Ridge, Korean War

#3 Discharges, S.S. Clearwater Victory, Viet Nam War.

#4 Coast Guard Discharge, WW II

#5 Master's License, 9th issue, expired

#6 Notice of Levy, June 2, 1992

#7 Check, $30,000, paid to Dean Witter, 25 June 1992

#8 Letter of Dean-Witter to F.G. Jensen on June 11, 1992 sent to Batangas, Philippines

#9 Response to #8 on 12 September 1992

#10 Transcript of tax account, November 25, 1992

#11 I.R.S. letter of December 18, 1992 accounting for seizure of 2 June 1992

#12 Letter to tax ombudsman on 28 December 1992

A CASE OF IMPROPERLY COLLECTED TAXES

INTRODUCTION

Facts of the Case

Plaintiff, Frederick G. Jensen, in a suit against the United States, left the United States on a visitor"s visa to go to the Philippines in May of 1987. He left behind a bank account, entitled "Jensen v. U.S. Defense Fund", at Chesapeake National Savings Bank, Kilmarnock, Virginia, which had a power of attorney to receive and deposit his monthly social security pension check. He anticipated the Internal Revenue Service would levy upon this account under 26 U.S.C. 6331, as it had done previously to collect taxes. Such a seizure is subject to court review and plaintiff expected to get his day in court. Plaintiff had not paid taxes since 1978, because revenues are used to pay for some abortions, as for

service persons, women in prison, etc., which are not legal abortions.

By remaining in the Philippines, whose constitution affords equal protection in law to the mother and her unborn child, plaintiff hoped to avoid legally the further accumulation of taxes due to the United States.

Plaintiff returned to the United States on or about May 30th 1992 and on June 2nd the I.R.S. sent a notice of levy (under §6331, above) to Dean Witter Reynolds in New York seizing plaintiff's interest in Benguet Corporation stock, which was held by them in the 'street' name. Neither plaintiff or is broker in Olympia, Washington, had notice of the levy, contrary to the requirements of the statute, §6331. In these circumstances plaintiff handed to his broker in Olympia a cashier's check for $30,000, dated 25 June drawn on Seafirst Bank in Olympia, to pay for securities

purchased.

In a matter of days his Olympia broker informed plaintiff that the New York office of Dean witter 'broke' the sale of securities to his account, i.e., failed to deliver certain of the securities bought. This was how they learned of the notice of levy issued by the I.R.S. on June 2, 1992.

The Problem

Statutes do not exactly cover the case presented above, nor does a similar case appear in the annotations in which additional property belonging to a delinquent taxpayer comes into the hand of a third party which was not subject to the levy, since the 23 day period of notice was expired. Unknown to the tazpayer, a copy of the levy as the law requires was sent to his former adress in the Philippines.

Questions

1. After the expiration of the 23 days legally allowed for failure or

neglect to pay taxes, does a notice of levy operate to establish a lien on property subsequently coming into the hands of a third party, which belongs to a taxpayer said to be delinquent?

2. Is another notice of levy needed to attach a check coming into the hands of a third party, where no notice or copy was sent to the taxpayer, and the 23 day periodlegally required for failure or neglect to pay is expired?

3. Does such a lien fall on securities purchased in ignorance of the levy or on the check to pay for them that was delivered after the period of notice?

4. If plaintiff's reason for not paying taxes is not frivolous, is he liable for the fayment of fines, interest, penalties, or costs, or all of them?

5. Does a taxpayer have an obligation to join a third party propery-holder on the ground that his property was illegally

surrendered to the I.R.S.?

Other questions may arise, but these will serve to direct an examination of the law in the light of the facts.

Tax Laws in General

The Criminal Offense

The non-payment of Federal income taxes is a criminal offense under some circumstances, punishable by a fine of $100,000, maximum, and imprisonment for up to 5 years. To maintain the criminal charge there must be proof of corrupt acts, i.e., criminal occupations or physical or positive resistance offered to collection efforts of the Secretary of the Treasury. §7201, 26 U.S.C. 380 U.S. 343, 85 S. Ct. 1004, Sansone v. U.S.

In Sansone the Court held, "...the elements of §7201 are willfulness; the existence of a tax deficiency, and an affirmative act constituting an evasion or attempted evasion of the tax,...". (See p. 351)

The court found, "...undisputed that petitioner filed a tax return and that petitioner's filing of a false tax return constituted a sufficient affirmative commission to satisfy the requirement of §7201".

Jensen, plaintiff pro se C93-5248B, U.S. District Court, Western District of Washington at Tacoma, avers the contrary: He took pains to show he owed some tax legitimately in order to verify his refusal to pay to the general fund of the United States money used to make possible abortions for women in the services, in prisons, and poor women who were healthy. It is surely clear where children are deprived of life for frivolous reasons, as where unwed mothers dispose of bastard children, the court is in to position to restore them to life upon a finding they were not terminated legally in the first place. That remedy is beyond the power of the court. Neither can the citizens be taxed to pay a fine,

since it is the citizens as a class who endure the injury.

Reasonable Refusal

Plaintiff believes §7201 may be construed to bar a flat refusal to pay taxes for no reason. However, the quality and legality of a refusal with a reason is subject to adjudication, and plaintiff has a right to defend his refusal to pay, as a reasonable and legally supportable act.

In Spies v. U.S., N.Y. 1943, 317 U.S. 492, 497, 63 S. Ct. 364, 87 L. Ed. 418, a taxpayer was charged with a felony under 26 U.S.C. §145§b¶, §now 26 U.S.C. §7201) for a willful attempt to evade the payment of taxes. The court noted, (p. 497)

"Willful failure to pay tax is punishable as a misdemeanor, §145(a). The climax of this variety of sanctions is the serious and inconclusive felony defined to consist of willful attempt in any manner to evade or defeat the tax, §145(b). The question here is whether there is a distinction between the acts necessary to make out the felony and those which may make out the misdemeanor."

"Mere voluntary and purposeful (turn to p. 498), as distinguished from accidental, omission to make a timely return might meet the test of willfulness."

Plaintiff's failure to pay, as distinguished from his careful filing, was admittedly purposeful.

The effect of Tax Declaration

But the court goes on, (p.498),

"....in view of our traditional aversion to imprisonment for debt, we could not without the clearest manifestation of Congressional intent assume that mere knowing and intentional default in payment of a tax, where there had been no willful failure to disclose liability, is intended to constitute a criminal offense of any degree. We would expect willfulness in such a case to include some element of evil motive and want of justification...."

And, (p. 499),

"Althou the attempt succeed (sic) in evading the tax, there is no criminal offense of that kind, and the prosecution can be only for the attempt."

Criminal Non-Payment

Note also U.S. v. Bardin, C.A. Indiana, 1955, 224 F. 2d 255, in which concealment of assets was sufficient to charge felony. 26 U.S.C.A. §§145(a), (b), 374(a).

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Spies, above, was upheld in U.S. v. Mann, D.C. N.Y. 1968, 291 F. Supp. 628, p. 273. "The government must prove an 'evil motive and want of justification'."

Religious Belief

Plaintiff was denied access to the tax ombudsman wrongfully, because of an alleged religious orientation. Religious belief is not a good reason for failure to pay taxes. In U.S. v. Kahl, C.A. Tex., 1978, 588 F. 2d 1351, p. 1356, footnote 7, the court stated,

"Given the clear evidence demonstrating his failure to file was willful, his (Kahl's) religious beliefs ....could not negate the criminality of that willfulness."

And, in U.S. v. Reed, Tex., 1982, 670 F. 2d 622, Cert. Den. 102 S. Ct. 2945, 457 U.S. 1125, 73 L. Ed. 2d 1341, the court wrote,

"Evidence of a person's philosophy, motivation and activities as a taxpayer is relevant and material to the issue of intent." (See p. 623)

The Irrelevancy of Irreligion

Relevant to his intent, plaintiff concedes, as to his religious views, and they may be taken as guiding his actions. More, these actions are the proper object of the laws and the judgment of the courts. In no case, however, does mere religious belief support either summary judgment, or any denial of equality before the law, or the denial of due process. Freedom to acquire beliefs is a First Amendment right.

Reasonable Care in Tax Matters

Title 26 U.S.C. §6651(a) provides a penalty for failure to file, "...unless it is shown that such failure is due to reasonable cause and not due to willful neglect,....". The taxpayer bears the burden of showing reasonable cause.

Plaintiff is not open to a charge of neglect, since he made out and signed duplicate returns for the record in 1986 for the years 1981, 1982, 1983, and 1984.

Olshausen v. C.I.R., C.A. 9, 1959, 273 f. 2d 28 on page 28, Cert. Den. 80 S. Ct. 34, 364 U.S. 855, 5 L. Ed., 2d 79 upholds the reasonable cause requirement of the statute as constitutional where the taxpayer failed to show reasonable cause; also upholding the additional penalty. In Marvel v. U.S., C.A. Okla. 1983, 719 F. 2d 1507, at p. 1517, the court found taxpayers failed to allege any reasonable cause; "The taxpayers raised no issue concerning the penalties." (under 26 U.S.C. §§6651(a)(1), 6651(a)(2), 6656(a), 26 C.F.R. §§301.6651--1(c), 301.6656--(a)(2), 1976) Neither does plain ignorance or simple mistake excuse a taxpayer from the reasonable care requirement. Henningsen v. C.I.R., 4, 1957, 243 F. 2d 954,

"....There is no uncertainty as to the settled rule that uninformed and sunsuuported belief or an innocent mistake does not of itself constitute reasonable cause."

Misguiden constitutional or legal beliefs cannot be relied on by the taxpayer

to avoid the reasonable cause showing that is his burden. In footnote 2, p. 1271 the court said, "Reliance on their misguided constitutional or legal beliefs was not reasonable." Edwards v. C.I.R., 9, 1982, 680 F. 2d 1268. In another case the court was saying, (Paymer v. C.I.R., C.A. 2, 1945, 150 F. 2d 334)

"....ignorance of the law will not excuse the failure of a taxpayer to file a return, no penalty may be imposed where a reasonable cause for the failure is shown. ...Such a decision (concerning reasonable cause) turns upon the particular circumstances of the case....".

Good Reasons for Failure to File

Where the taxpayer's return indicated the fair value of certain property he was not willfully negligent, it was held. Dexter v. U.S., D.C. Miss., 1969, 306 F. Supp. 415, at p. 428(18),

"Plaintiff, ...acted upon reasonable cause, and not willful neglect in failing to file...., because plaintiff did make a return and included therein the fair market value of...property transfered".

Delinquent filing was not neglect where advice of counsel was accepted. Miller v. U.S., D.C.C. Wyoming, 1962 211 F. Supp. 758,

"The record is devoid of any fact or willful neglect of the laws or intentional neglect or disregard of the rules and regulations resulting in delinquent filing....and the underpayment of income taxes by the taxpayers complies with the 'reasonable cause' provision of the statute".

If ordinary business care is practiced there may develop reasonable cause was shown for deficient filing. Orient Investment & Finance Co. v. Commissioner, 1948, District of Columbia Cir., 83 U.S. App. D.C. 74, 166 F. 2d 601, at 603, 604, 3 A.L.R. 2d 612,

"The irregragible conclusion from the record....that taxpayer here, in fact and in law, exercised such ordinary business care and prudence as to bring him within the rule that 'reasonable care means nothing more than the exercise of ordinary business care and prudence'."

The rule that reasonable care means ordinary business care and prudence was

upheld in both of the following cases: Southeastern Finance Co. v. Commissioner, 5 Cir.,153 F. 2d 265; and Girard Investment Co. v. Commissioner, 3 Cir., 122 F. 2d 834.

Filing penalties have been avoided by reliance in good faith on professional advice. In this case, Haywood Lumber & Mining Co. v. C.I.R., 1950, 2 Cir., 178 F. 2d 769, reliance on advice of counsel in good faith is "reasonable cause" for failing to file a tax return as respects imposition of penalties therefore. The court said on p. 771,

"We doubt if anyone would suggest that a client who stated the facts of his case to his lawyer must, in order to show ordinary business care and prudence, inquire specifically about the applicability of various legal principles which may be relevant to the facts stated.

"The courts have recognized that reliance on the advice of counsel* or, of expert accountants,** sought and received in good faith is 'reasonable cause' for failing to file a tax return."

*C.R. Lindback Foundation v. Commissioner, 4 T.C. 652, 667, Aff'd 3 Cir., 15 F. 2d 986; Daton Bronze Bearing Co. v. Gilligan, 6 Cir., 281 F. 2d 709.
**Hatfried, Inc. v. Commissioner, 3 Cir., 162 F. 2d 628; and also Orient, above

A Reliable Definition

Hatfried, above, may be the definitive case on the question fo reasonable cause and willful failure to file. Kalodner, J., saw fit to quote Southeastern Finance Co., above, whic he reiterated in the words, "Reasonable cause means nothing more than the exercise of ordinary business care and prudence." In 1986 plaintiff's lawyer was threatened by the courts with Rule 11 for bringing a frivolous case.

Frivolous Filing andClaims

Taxpayers have frequently refused to pay taxes or part of their taxes for variously alleged legal and constitutional reasons. Many of these were objections of one kind or another to the War in Viet Nam. The tax code contains specific regulations on the subject of frivolous suits or suits

based on spurious legal logic. If this plaintiff's complaint is to be heard he must show compliance with 26 U.S.C. §6702 (a): "If (1) any individual files what purports to be a return of the tax imposed by subtitle A (income, etc. taxes) but which--(2) the conduct referred to in paragraph (1) is due to --(A) a position which is frivolous, ...Then such individual shall pay a penalty of $500. (b) The penalty imposed by subsection (a) shall be in addition to any other penalty provided by law.".

The Penalty Explained

Volume 47B of Corpus Juris Secundum (C.J.S. §1230 at p. 627 states, "The code provides a penalty of $500 in addition to any other penalties provided by law, to be paid by any individual who files a frivolous income tax return."

"....a frivolous penalty is properly imposed on taxpayers who failed to sign the perjury clause on their returns,

or who filed returns containing an unwarranted assertion of the 5th Amendment privilege against self-incrimination."

Upon a Wish to Impede Collection

Where a taxpayer takes a frivolous position and it is on its face the motive for supplying incomplete or incorrect information or the motive or desire to impede the administration of the income tax laws, the penalty also applies. But, the judgment of frivolousness could itself fall into the trap of frivolity. This must be avoided.

A Test for Frivolousness

C.J.S. also states (Idem), "The test for frivolousness is an objective one, under which a court must evaluate a taxpayer's position in terms of its legal underpinnings."

In McKee v. U.S., C.A. 4 (N.C.) 781 F. 2d 1043, Cert Den. 106 S. Ct. 3274, 477 U.S. 905, 91 L. Ed. 2d 564 the court held,

"We agree with the reasoning in Kahn, 753 F. 2d at 1214, that the test for frivolousness is an objective one, under which we must evaluate a taxpayer's position in terms of its legal underpinnings. Neither the holding of a sincere religious belief nor the expression of anti-war sentiments is a frivolous action. However, to take a position which indicates a desire to impede the administration of tax laws is a legally frivolous action." (because nothin is so certain in life as death and taxes, as the saying goes.)

The McKees reduced the taxes they paid by an amount which they claimed was money spent for national defense.

In Buck v. U.S., 756 F.Supp. 1014 (S.D. Tex., 1991) at p. 1016 (4) the court noted,

"In attempting to demonstrate their good faith belief that they may claim a Fifth Amendment privilege allowing them to refuse to sign their tax return, these plaintiff-taxpayers have presented evidence they relied on legal advice in adopting that position. Unfortunately for these taxpayers the law is very clear that a taxpayer's assertion of good faith is irrelevant under 26 U.S.C. §6702. Hudson v. U.S., 766 F. 2d 1288, (9th Cir., 1985). In a case, Knottnerus v.

U.S., 582 F. Supp. 1572 (D.C. Ill., 1984), the court held that a taxpayer's state of mind when filing a tax return is not part of the test as to whether a return is frivolous....".

The Mind of the Plaintiff, Objectively

The mind of the plaintiff, Jensen, involves the case, Roe v. Wade, 410 U.S. 113, (1973), which supports the life rule (of the common law) in that it clearly believed life extended from birth onward in law. However, it specifically avoided deciding on the origin of human life. (p. 159, "We need not resolve the difficult question of when life begins.") It is extremely difficult to imagine that an abortion which means to terminate life, is no injury, somehow, to anyone, either the life taken or to society, the light of whose day the dead one will never see.

There have been volumes of sincere cases that have been held frivolous, but the life question posed by this case is not among them. If it had made it into the

courts in the first instance in relation to the abortion issue, there must have been many such cases, but no extensive record appears. In refusing to 'resolve the difficult question of when life begins', the Court has as much as admitted that its position on the abortion question depends on denying life before birth--and the Court is mistaken in avoiding the issue.

Who, exactly, is responsible? One fellow-citizen's opinion was direct, "I don't care what Jensen says, Uncle Sam does not kill babies." More accurately, a good question is, does any law allow a putative mother to end the life of an unborn bastard child. What Life? The life that the abortion procedure, as currently practiced, must destroy to be a success. Plaintiff here believes this question is material to the resolution of his personal tax problem in court.

Tax Laws in This Case

Plaintiff's Refusal to Pay

Plaintiff refuses to pay taxes and alleges he has reasonable cause for failure to pay.

While the I.R.S. is charged with the collection of taxes from citizens, including plaintiff, and charged to do so regardless of any political viewpoint the citizen holds, frivolous or not, the rules of the game are very strict. Whenever and wherever the I.R.S. uses its considerable power to collect taxes, those seizures are subject to post-seizure review in several courts under our laws. A seizure the I.R.S. made in this case, as noted above, is subject to strict scrutiny under those laws. We need to look at the specific sections of the Statutes that apply in this case.

The Power to Collect Taxes

26 U.S.C. §6321--If any person liable to pay any tax neglects or refuses

to pay the same after demand, the amount (Including interest, etc., etc.,) shall be a lien in favor of the United States upon all property and rights to property belonging to such person.

Liens for Federal taxes are entirely statutory and provisions for their collection are to be strictly followed according to Federal law. U.S. v. Mosolowitz, D.C. Conn., 1967, 269 F. Supp. 12 at p. 16.

Plaintiff deliberately refused to pay his taxes in the first place and failed and neglected to acquies in any show of traditional or voluntary payment of what he must usually have been obliged to pay.

26 U.S.C. §6322--Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse

of time."*

*"Kufel v. U.S., 1968, 441 P. 2d 771, 103 Ariz. 321; Streeter Bros. v. Overfelt, D.C. Mont., 1961, 202 F. Supp. 143; Minz v. Fischer, 1963, 240 N.Y.X. 2d 649, 19 A.D. 2d 36; Calvin & Co. v. U.S., 1968, 70 Cal. Rptr. 578, 264 C.A. 2d 751; U.S. vs. Hodes, C.A. N.Y., 1966, 355 F. 2d 746, Cert. Disc., 87 S. Ct. 784, 386 U.S. 901, 17 L. Ed. 2d 779.

Plaintiff was dispossessed of certain property heretofore and realizes his enjoyment of possession is at risk as long as he has unpaid taxes. ($50 plus) However, this particular seizure was made by a levy on securities in the possession of a third party and not specifically on a certain cashier's check delivered after the date of the levy.

Liens on Securities

26 U.S.C. §6323(a)--The lien imposed by section 6321 shall not be valid against any purchaser....

(b) Even thou notice of a lien imposed by 6321 has been filed, such lien

shal not be valid

(1) With respect to a security (as defined in subsection (h)(4)

(h)(4) the term 'security' means ....warrant or right to subscribe to or purchase...shares of stock.

(b)(1)(A) as against a purchaser of such security who at the time of the purchase did not have actual notice or knowledge of the existence of such a lien.....

This section is intended to afford protection to those named in it against secret tax liens in favor of the government. Randal v. Colby, D.S., Iowa, 1961, 19 F. Supp. 319.

In this case Dean Witter, on order of a broker at its office in Olympia, Washington, was intending to buy certain mutual fund stocks on plaintiff's order.

Notice to 'Would Be' Purchaser

The purpose of this section requiring liens to be filed is to give notice to would be purchasers of property of govern-

ment's right to collect taxes due from owners of property. Pipola v. Chicco, D.C. N.Y., 1959, 169 F. Supp. 229, modified on other grounds, 274 F. 2d 909.

The purpose of this section was to help private secured creditors, not to injure them. Sams v. Redevelopment Authority of the city of New Kensington, 1970, 261 A. 2d 566, 436 Pa. 524.

When the parties involved have notice of who owes the government what, there often arises a question, as in this case, as to priorities. In this case a bank's check, stockbroker's securities, taxpayer's liability, and an agent's liability are all involved.

In Randall, above, the government could have money owing to a contractor on a mechanic's lien by a tax-delinquent new home owner, because the government had first crack at anything of value credited to the taxpayer. Involved were claims for poor

performance that the taxpayer had against the contractor.

In the New Kensington case, above, the secured party lost his priority interest over the tax lien.

In Pipola, above, the government had a lien 10 months prior to the time the buyer "overlooked" the lien.

As to liens there is a common law rule 'the first in time is the first in right" and it applies to property.

Where several liens have been filed the first lien on accumulated taxes has priority. U.S. v. Bank of Celina, C.A. Tenn., 1933, 721 R. 2d 163. Though the government has a lien of long standing back to 1986 and has collected on some of its notices, this notice given on 2 June 1992 is the one that establishes the priority of the government's claim.

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Choate and Inchoate Liens

Under law developed by federal decisions, to be fully choate a lien must attach to specific property and the amount and identity of the lienor must be established. See Consumers Power Co. v. Rubiner, D.S. Mich., 1963, 225 F. Supp. 926. This apparently refers to liens which claim priority to federal tax liens.

Title to Property Under this lien

Under this section requiring that notice of federal tax lien be given to purchasers of property subject to lien, unmarketability of purchaser's title would not affect their title as 'purchasers'. Hay v. U.S., D.C. Cal., 1978, 461 F. Supp. 1168.

Where a Texas landowner sold realty to a taxpayer who assumed a prior mortgage and agreed to pay a balance through a series of post-dated checks, landowner's equitable vendor's lien for unpaid purchase price of such Texas reality, unperfected by

foreclosure at time federal lien was perfected, was junior in rank to the lien of the government and such situation was not changed by reconveyance of the property to the pandowner. U.S. v. Morrison, C.A. Tex., 1957, 247 F. wd 295.

"Who is a 'purchaser' within the meaning of this section making tax liens valid as against any purchaser until notice thereof has been filed by the Collector is a federal question;...". U.S. v. Hoper, C.A. Ill., 1957, 242 F. 2d 468. There may be little question the government had no priority over Dean Witter's original claim on plaintiff's assets or interests in stock bought years ago, but, the property in dispute here came into being long after the levy date, 2 June 1992.

Extent of Levy

§6631(b) "...a levy shall extend only to property possessed and obligations existing at the time thereof." Plaintiff

concedes he cannot ask for the return of delinquent taxes, but he asks whether the government has a right to retain any of the money over and above the taxes due which it has also claimed and taken. Since it was not taken under the strict letter of the law, it should be returned. The government was obligated to levy again upon new property rights.

§6631(c) Whenever any property or right to property upon which levy has been made...is not sufficient to satisfy the claim of the United States for which the levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy or the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid. No such levy was made because the I.R.S. took the full amount of its claim at one time. Therefore, the

plaintiff has a right to his day in court.

Right to Due Process

The statutory lien of the Secretary is not known in common law, because the government is authorized to sell both chattels and other personalty or legal rights. Courts have held this does not violate due process provisions in our constitution where such summary assessment and collection activities are subject to adequate opportunity for postcollection review.*

*Freeman v. Mayer, D.C. N.J. 1957, 152 F. Supp. 383 aff'd 253 F. 2d 295, Baddour, Inc., v. U.S., C.A. 5 Miss. 1986, 802

So long as there is adequate opportunity for the post-seizure determination of rights, summary tax collection under 26 U.S.C. §3690 (IRC 1939) meets the due process requirements of U.S.C.A. Constitutional Amendment 5.*

*Myers v. U.S., C.A. La. 1981, 647 F. 2d 591; Shapiro v. Secretary of State, 1974,

499 F. wd 527, 162 U.S. App. D.C. 391, aff'd 96 S. Ct. 1062, 424 U.S. 614, 47 L. Ed. 2d 278.

Enforced collection of federal taxes by seizure is constitutional inasmuch as this section (6631) provides an adequate remedy by which liability may be contested.*

*Detweiler v. U.S., D.C. Pa., 1975, 406 F. Supp. 695, aff'd 544 F. 2d 512, Cert. Den. 97 S. Ct. 1136, 429 U.S. 1105, 51 L. Ed. 2d 557.

Federal tax liens and the provisions for their collection are strictly federal and strictly statutory.*

*In re Cal-Neva Lodge, Inc., D.C. Nev., 1960, 186 F. Supp. 187.

In the same case: Remedy of United States is...special privilege which is analogous to, but in addition to garnishment and other remedies of ordinary creditor.

Notice of Seizure and Collection

This section (6631) requires that a taxpayer in a jeopardy situation be given some opportunity however short to fail or refuse to pay the tax before levy.*

*L.O.C. Industries, Inc. v. U.S., D.C. Tenn. 1976, 423 F. Supp. 265.

Notice of levy and demand are equivalent to seizure.*

*Phelps v. U.S., Ill., 1974, 95 S. Ct. 1928, 432 U.S. 330, 44 L. Ed. 2d 201.

Payment of the tax due will serve to release the levy. Third parties levied upon are entitled to notice when the levy is released. (§6331(e)(1)).

The Deficiency Notice

Power of the Commissioner to levy on a taxpayer's property is inoperative until failure or refusal of taxpayer to pay the required amount following deficiency notice. See Shapiro, above.

Whether jeopardy finding is made or not, taxpayer must be given notice and opportunity to fail or refuse to pay tax. Martinez v. U.S., C.A. Cal., 1981, 669 F. 2d 568.

An income tax levy does not require a prior judgment; all that is required is an assessment. Avel v. Campbell, C.A. Tex., 1964, 334 F. 2d 339.

Seizure of property by Secretary of the Treasury for unpaid federal taxes is merely a step in the collection process; seizure does not in of of itself operate to transfer title to the government. Matter of Troy Industries Catering Service Bkrtcy, Mich. 1980, 2 G.R. 521.

Government could levy upon funds which were wrongfully seized in the beginning, but which subsequently were applied to satisfy tax deficiencies. Ginsburg V. U.S., C.A. Cal., 1969, 408 F. 2d 1016.

It is on the holding in Ginsburg that plaintiff relies to distinguish between taxes due and money over and above which the government collected to ask for only the return of the latter. He recognizes

the power of the government to collect taxes by the power of the sword, but he is concerned that the tradition and custom in America to pay taxes in one sense voluntarily shall reflect badly upon him personally in the eyes of a civilized humanity which has always respected life in the womb of the mother. He can abide the prosecution of criminals internationally, but he does not want to be one of them.

Plaintiff also believes he is under no obligation to join Dean, Witter, Reynolds, a third party, to this suit.

Tird Party Suits

Delinquent taxpayer has no right to sue third party, who has been served with a notice of levy for surrender of property to taxpayer. In re Sigmund London, Inc., Bkrtcy, E.D. N.Y. 1992, 139 BR. 765.

Baddour, above, lost its property in the taxpayer's possession, but was granted its market value, which the government

had to pay.

The Issues in This Case

Plaintiff raises a question about statutory compliance on the part of the I.R. S. A broker who holds plaintiff's securities in the 'street' name no doubt has a lien on them prior to the date of this notice of levy. The question here concerns money that was delivered to the broker in the form of a cashier's check over three weeks after the June 2nd date of the levy. Neither the plaintiff nor his broker in Olympia were aware of the notice of levy, and a question arises whether the government had a coate lien on anythin.

While the tax question indisputably lies, the motive for the taspayer's delinquency, that life begins before birth is not a settled or even legally disputable question.

When Life begins in Law

The Position of the Supreme Court

of the United States

When does human life begin?

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When Life begins in Law

The position of the Supreme Court of the United States

When does human life begin?

The question was admittedly left unanswered in Roe v. Wade, 410 U.S. 113, at p. 159, "We need not resolve the difficult question of when life begins." Not also Mr. Justice Douglas' concuring in Doe v. Bolton, 410 U.S. 179 at p. 220 , "When life is present is a question we do not try to resolve."

Justice Douglas also quoted Mr. Justice Clark who was discussing Griswold v.Connecticut, 381 U.S. (1965) at p. 217 and footnote n. 6. "We held....that the states may not preclude spouses from atempting to avoid the joinder of sperm and egg. ....The phenomenon of life takes time to develop, and until it is actually present, it cannot be destroyed. Its interruption prior to formation would hardly be homicide,".

Thus, we need to search our legal records to learn how the law has dealt with the unborn from the moment of conception, i.e., the joinder of the sperm and the egg, and the moment of birth, approximately nine months later.

Plaintiff's Argument

Plaintiff's case, therefore, rests on how the court views his contention that nobody, least of all the putative mother, has any right to terminate such life as the unborn possesses, especially for the reason that the mother is not married. In that even it is the law that makes the child a potential bastard and it is patent the law has no right to cooperate in ending the life possessed for the reason of bastardy.

The Court has always respected the life in the mother's womb. Note its dictum in Union Pacific Ry Co v. Botsford, 141 U.S. 250 (1891) at p. 253, "The writ... was allowed at common law to guard against

taking the life of the unborn child..." (ex necessitate legis).

2) The right of privacy is a common law individual right. Botsford, p. 251, "No right is held more sacred or more carefully guarded by the common law than the right of every individual to the possession and control of his person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. (Emphasis added). As well said by Judge Cooley, "The righ to one's person may be said to be a right of complete immunity; to be let alone." Cooley on Torts, p. 29.

A woman's right of privacy, whether the child was a potential bastard in law or not was protected by statute in Virginia as early as 1769; (See 22 Geo. II (1748) of the edit of 1760, sect. 2). The law provided, among other things, "..it shall not be lawful for any justice or jus-

tice of the peace, to send for any woman whatsoever, before she shall be delivered, in order to her being examined concerning her pregnancy, or compel her to answer any questions relating thereto, before her delivery. (Nov. 1769--10th Geo. III, Henings, X--2, Vol 8, p. 376, II)

A single woman who was not a sermant was required to give 20 shillings to her church wardens for the poor if she was delivered of a child, but she could not be whipped or imprisoned for failure to pay, under the same law.

The Fourteenth Amendment to the Constitution of the United States applied to the to the unborn, both slave and free, in that a pretermitted child could inherit together with siblings under the common law rule of descents to shore in the slave holding property of a father or guardian. The inheritance could consist of property in an unborn slave.

I. "At a General Assembly....at the College, in Williamsburg, the 27th Day of October in the 22nd Year of George II....and in the Year 1748... (Chap. 2)...it shall and may be lawful....for the Father of Child or Children...at the Time of the Decease of the Father....(If there is)...then an infant in the womb....by his Deed executed in his Lifetime, or by his last Will and Testament in writing...to dispose of the Custody of such Child or Children for and during the Time as he, she, or they, shall remain under the Age of One and Twenty Years, ...to an Person or Persons....other than Popish recusants...

II. "AND that every Person or Persons to whom such Custody....hath been, or shall be so disposed or devised as aforesaid, shall or may take into his or their Custody to the use of such Child or Children....the slaves....of such Child or Children,....as by Law a Guardian in common Socage might do."

Nor was it possible for the mother of a slave child in the womb at the date of the transfer to remain with the mother if the father's will provided otherwise. They might separately be devised because the child in the womb had no life of its own since it was the property of its master.

Now see Virginia Colonial Decisions, Vol. I, the General Court of Virginia, 1728--1741, Giles et Ux et al v. Mallicote, "I shall now proceed to consider....Whether the devise of a Negro Child in the Mother's Belly be good tho" the Child is not born till after the Testator's Death.

"The objection I suppose will be that the Thing given was no in esse in Rerum natura at the Time of the devise And so being no more than a Possibility is not devisable.

"I shall agree that Possibilities which are remote (2., 3., 4.)children) are not devisible but I take a Difference between a near and a remote Possibility (Jacob's Dictionary verbo Possibility).... when the Child is actually in ventre sa mere for a Devise to such is good and tho" it be a Possibility it must be allowed to be a very near Possibility and must happen in a short

Time. For my part I can see no good reason Why such a Devise should not be good."

One notes, there was no judgment in the case. Case law developing in Colonial times was more sophisticated about a century later. It could distinguish between the unborn as a piece of property and a life that was free.

Spotts v. Gillespie 6 Randolph 566 (1828): In this case the law of Virginia recognizes that a child born of a slave not yet free under Pennsylvania Law, who is free by the law of Pennsylvania, is also free in Virginia, but a child born in Virginia of that slave sold in Virginia is a slave. It appears she may have been sold in Virginia to avoid having to comply with a freedom law coming into effect in the future in Pennsylvania. The common law of Virginia provided that the status of a child at birth followed the status of the mother at birth.

4) It is not yet decided whether the conceptus in vitro is life or property or whether it may be sold or destroyed, and the question has not been resolved under the 14th Amendment. See Davis v. Davis, 57 L.S. 5023 (1989); Tenn. Appeals Ct., No. 180, 9-13-90, 58 L.W. 2205. A recent news report avers the father has destroyed seven embryo's created in vitro of his sperm and his former wife's ova.

5) To put a child of the unmarried mother to death in the womb for that reason is frivolous. Prior to Roe there was no such thing as a wrongful life tort.

6) The use of the condum is not in itself illegal. That depends on the use to which it is put. If it is used for mere business reasons as in some counties of the State of Nevada where prostitution is alleged to be legal, then the use is no longer fornication or adultery, but must

be technically described as no more than (mutual?) masturbation.

Resolution of the Case

Plaintiff believes this case can be resolved with the following actions by this court, and so respectfully does request.

Plaintiff agrees that he owes taxes in the amount of $11,381.22, as shown on the tax forms filed. Since the I.R.S. seized an amount of $24,354.23, Plaintiff asks the court's order upon the Secretary of the Treasury, Mr. Lloyd Bentzen, for the return of $12,973 (24,354-11,381=12,973) or such portion as the court will allow, and certain costs.

Plaintiff also requests the court's declaratory judgment that plaintiff raises a legal and proper question, namely, that human life begins before birth, has now and always has had the respect of the law in the mother's womb, is entitled to be let alone

until birth, and may not be terminated for frivolous reasons--such as the one that it will be a potential bastard in the eyes of the law.

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
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3. Article Addressed to:
MR. WARREN SCHNEIDER
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DEPARTMENT OF JUSTICE
450 GOLDEN GATE AV, 15TH FL
SANFRANCISCO, CA 94102

4a. Article Number
P 391 597 190

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
JUL 27 1993

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee)
6. Signature (Agent)

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